

**BOARD OF APPEALS CASE NO. 4890**

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**BEFORE THE**

**APPLICANT: Austin Moberly**

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**ZONING HEARING EXAMINER**

**REQUEST: Variance to permit a garage larger than 50% of the square footage of the principal structure; 2808-A Mountain Road, Joppa**

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**OF HARFORD COUNTY**

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**Hearing Advertised**

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**Aegis: 1/27/99 & 2/3/99**

**HEARING DATE: March 24, 1999**

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**Record: 1/29/99 & 2/5/99**

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### **ZONING HEARING EXAMINER'S DECISION**

The Applicant, Austin Moberly, appeared before the Hearing Examiner requesting a variance to Section 267-26(C)(1) of the Harford County Code, for a garage which exceeds 50% of the habitable space and height of the principal structure in an Agricultural District.

The subject parcel is located at 2808-A Mountain Road in the First Election District. The parcel is identified as Parcel No. 588, in Grid 1-A, on Tax Map 65. The parcel contains 7.906 acres, more or less, all of which is zoned Agricultural.

Mr. Austin Moberly appeared and testified that the subject parcel is improved by a single-family dwelling occupied by himself and his family and a 25 foot by 55 foot accessory building which he uses for storage. The Applicant said that no commercial or business activities are conducted in the accessory building. The Applicant said that he will remove the older accessory structure located on the property if the requested variance is approved. He said that he is requesting a variance for a garage with dimensions of 24 feet by 40 feet. He said the garage contains 1,980 square feet and will be 22 feet high. The Applicant said that the existing dwelling is 18 feet in height and contains 1,000 square feet. The Applicant said there will be no living quarters in the garage and he said he did not feel that the variance would have an adverse impact on adjoining properties because the accessory building will be constructed 2,200 feet from MD Route 152.

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The Applicant said he would suffer practical difficulty and unnecessary hardship if the variance is denied because when he initially inquired about constructing the building, he was advised he did not need a building permit; therefore, he secured an electrical permit to construct the building and then found that a permit was, in fact, necessary.

Mr. John Hodges appeared and testified that he resides at 2810 Mountain Road, approximately 150 feet from the Moberly property and said he did not feel that approval of the variance would have an impact on his property and that the garage cannot be seen from MD Route 152.

The Staff Report of the Department of Planning and Zoning recommends conditional approval and provides:

“Given the proximity of the garage to MD Route 152 and the adjacent dwelling, approval of the request should not have an adverse impact on the adjacent properties or the intent of the Code.”

### **CONCLUSION:**

The Applicant is requesting a variance for a garage which exceeds 50% of the habitable space and height of the principal structure. Section 267-26(C)(1) provides:

“Use limitations. In addition to the other requirements of this Part 1, an accessory use shall not be permitted unless it strictly complies with the following:

- (1) In the AG, RR, R1, R2, R3, R4 and VR Districts, the accessory use or structure shall neither exceed fifty percent (50%) of the square footage of habitable space nor exceed the height of the principal use or structure. This does not apply to agricultural structures, nor does it affect the provisions of Section 267-24, Exceptions and modifications to minimum height requirements. No accessory structure shall be used for living quarters, the storage of contractors' equipment nor the conducting of any business unless otherwise provided in this Part 1.”

The testimony indicates that the garage is two-stories and contains 1,920 square feet and is 22 feet in height. The principal dwelling on the parcel is 18 feet; therefore, the Applicant is requesting a height variance of 4 feet, as well as a variance to exceed 50% of the square footage of the dwelling.

The uncontradicted testimony of the Applicant was that prior to constructing the garage,

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he attempted to obtain a permit and was advised that a permit was not necessary to construct the building; therefore, the Applicant applied for an electrical permit and after construction of the building, was advised that it was necessary to have a permit because the building he constructed was not an agricultural building but a garage. The Applicant testified that he does not intend to store contractor's equipment nor conduct business activities in the building and that the building does not contain living space.

The testimony of the Applicant and his adjoining property owner indicates that approval of the variance will not be substantially detrimental to adjacent properties or materially impair the purpose of the Code.

It is the finding of the Hearing Examiner that denial of the variance would cause practical difficulty because the Applicant was originally led to believe that it was not necessary to obtain a permit for construction of the building. After construction of the building, the Applicant was told a permit was necessary. Denial of the variance would require the Applicant to remove the building and cause an unnecessary hardship.

Therefore, it is the recommendation of the Hearing Examiner that the requested variance be approved, subject to the following conditions:

1. The Applicant shall obtain all necessary permits and inspections for the building.
2. The garage shall not be used for living purposes, nor shall it be used in the furtherance of a business.
3. The garage shall not be used for the storage or repair of commercial vehicles and/or contractor's equipment.

Date            **APRIL 12, 1999**

**L. A. Hinderhofer**  
**Zoning Hearing Examiner**